UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RUSSELL KLIPPEL, on behalf of himself and all others similarly situated,

Plaintiff,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC

and

CATHERINE M. HEDGEMAN, ESQ.,

Defendants.

No. 15-cv-1061 (MAD)(TWD)

ORDER FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

THIS MATTER presented for hearing before the Honorable Mae A. D'Agostino, U.S.D.J., in order for this Court to conduct a preliminary hearing to determine whether the proposed Settlement Agreement and Release of Claims dated September 20, 2016 ("Settlement Agreement") between Plaintiff Russell Klippel and Defendant Portfolio Recovery Associates, LLC ("PRA" or "Defendant"[1]) is fair, reasonable and adequate, to provisionally certify the Settlement Class, to address the appointment of Class Counsel and Class Representative, and to schedule a Fairness Hearing;

AND THE COURT, having read and considered the Settlement Agreement and other papers submitted by counsel for the parties, having reviewed and considered the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"), the memorandum of law in support thereof and the declarations and exhibits attached thereto, oral arguments of counsel presented to the Court (if any), and all papers filed and proceedings had herein, and for good cause appearing, the Court finds the following:

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[1] As addressed in the Settlement Agreement, Defendant Catherine M. Hedgeman, Esq. (an employee of PRA) is not a party to the Settlement Agreement, but is included in the release set forth therein. Ms. Hedgeman is not included within the definition of "Defendant" for purposes of this Order.

1. The settlement before the court only involves Plaintiff, the Class Members in the class proposed to be certified for settlement purposes, and Defendant.

2. Defendant has denied any and all liability alleged in the Amended Complaint.

3. As a result of arm's-length negotiations, Class Counsel and Defendant's Counsel reached a settlement on behalf of Plaintiff and Defendant that provides, among other relief, monetary relief to the Class Members.

4. Plaintiff and Defendant now request preliminary approval of a Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3).

5. The Court has read and considered the Settlement Agreement, the Motion and certifications submitted in support of it, the accompanying documents and the record.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

6. The Motion for Preliminary Approval of the proposed settlement is GRANTED and Plaintiff and Defendant are hereby ordered to comply with the schedule as set forth in this Order.

7. The Court has jurisdiction over the subject matter of this matter and over Plaintiff and Defendant hereto.

8. Defendant shall comply with its obligation to serve written notice of the proposed class settlement to the appropriate governmental representatives pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 and the terms of the Settlement Agreement, no later than ten (10) days after the date of this Order. If Defendant fails to serve such notice by this

deadline, it must immediately inform the Court and Class Counsel in case the Fairness Hearing needs to be rescheduled.

9. Pursuant to Fed. R. Civ. P. 23(b)(3), the following Settlement Class is preliminarily certified for purposes of final settlement: All those individuals who opt-in timely, who meet the following definition:

> Natural persons who were sued by PRA in a state court consumer collection action brought within the Northern District of New York in a city court in this District in an action in which a summons misrepresented the state court's jurisdiction over the defendant by stating in the summons , in relevant part: "BASIS FOR VENUE: Defendant resides in jurisdiction of CITY OF__________ " [or any substantially similar statement], in which the address of the state court defendant's residence is listed in the summons and/or complaint, and is outside the jurisdiction of the relevant city court, and, in which the summons was filed within one year of the initiation of the instant class action. The Settlement Class will only include individuals who received a summons and/or complaint signed by Catherine Hedgeman, Esq. The Settlement Class will not include anyone who filed for bankruptcy after the alleged violation took place or anyone who is deceased. For purposes of determining whether an address listed in a summons is "outside the jurisdiction of the relevant city court," the parties agree that this shall mean that the residence of a consumer to whom a summons was addressed was not in the city for whose city court the collection action was filed in *or* in a town that is (i) within the same county and (ii) contiguous to the city by land.

10. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. Specifically, the Court finds that the Settlement Class satisfies the prerequisites for class certification under Rule 23 in that:

a. The members of the above defined class are so numerous that joinder of all members is impracticable.

b. There are questions of law and fact common to the Settlement Class.

c. The claims of the Class Representative (appointed below) are typical of the claims of the Settlement Class.

d. The Class Representative fairly and adequately represents the interests of the Settlement Class. There are no conflicts of interest between the Class Representative and members of the Settlement Class.

e. Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the class.

f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

11. The Court finds that the Settlement, on the terms and conditions set forth in the Settlement Agreement attached hereto as **Exhibit A**, is fundamentally fair, reasonable, adequate and is in the best interests of the Class Members, especially in light of the benefits achieved on behalf of them; the risk and delay inherent in litigation; and the limited amount of any potential recovery that could be shared by the Class Members.

12. Pursuant to Fed. R. Civ. P. 23(a)(4), the Court finds that Plaintiff Russell Klippel fairly and adequately represents and protects the interests of the Settlement Class and appoints him as Settlement Class Representative.

13. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints Daniel Schlanger of Kakalec & Schlanger, LLP and Anthony J. Pietrafesa of the Law Office of Anthony J. Pietrafesa to serve as Settlement Class Counsel. They have investigated the claims, prosecuted the case, negotiated a fair and reasonable settlement, and have the experience, knowledge, and resources to represent the Settlement Class.

14. The Settlement Agreement provides in part for Defendant to (1) provide monetary relief to each Class Member who does not exclude himself or herself from the Settlement; (2) pay the costs of administering the settlement; (3) pay reasonable attorneys' fees, costs and expenses; and (4) pay an amount to the Class Representative as service payment and for a release of his individual claims, as provided by the Settlement Agreement.

15. The Court approves Heffler Claim Group as the Settlement Administrator. The Settlement Administrator shall be responsible for administering the Settlement according to the terms set forth in the Settlement Agreement and as Ordered herein.

16. Pursuant to the procedures set forth in Paragraphs 35 through 39 of the Settlement Agreement, Defendant provided Plaintiff with certain summonses and complaints from which Plaintiff's counsel was able to identify the Class Members. The Parties have agreed on the final list of Class Members.

17. The costs of administering the Settlement, including but not limited to, printing the Notice, updating the database and mailing the Notice and, thereafter, issuing and mailing the settlement checks shall be covered by Defendant and paid pursuant to the terms of the Settlement Agreement. Pursuant to Paragraph 48 of the Settlement Agreement, the Parties have agreed that 120 days after the last date on which settlement claims payment checks may lawfully be cashed will be paid out pursuant to a cy près agreement.

18. The Court finds that the first class mailing of the proposed form of Settlement Class Notice attached hereto as **Exhibit B** in the manner set forth herein and in the Settlement Agreement is the best notice practicable under the circumstances, consistent with due process of law, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Fed. R. Civ. P. 23.

19. The Settlement Administrator shall cause the Notice to be mailed to all Class Members in accordance with the terms of the Settlement Agreement in substantially the same form as **Exhibit B**, no later than 21 days following the date of this order.

20. The Notice shall clearly state the procedures for an individual to opt out of the class or to object to the Settlement.

21. By no later than sixty (60) days following the date of this Order, the Settlement Administrator shall provide to Class Counsel and counsel for the Defendant one or more declarations attesting to compliance with the terms of this Order and the Settlement Agreement, including declarations stating that it properly mailed the Notice in accordance with the terms of this Order and as required by the Settlement Agreement and maintained a settlement website as provided for in the Settlement Agreement.

22. The moving parties shall file the Settlement Administrator's declaration with the application for Final Approval. Objections not conforming to the requirements set forth in the Notice shall be stricken and shall not be considered or heard by this Court. Requests for exclusion from the class that not conforming to the requirements set forth in the Notice shall be deemed inadequate and shall not serve to exclude any individual from the class.

23. A Fairness Hearing shall be held before this Court at **10:00 a.m., on September 6, 2017 (or sometime that week, but not sooner than 110 days after entry of this Order), in Courtroom No. 5 at the James T. Foley U.S. Courthouse, 445 Broadway, Albany, NY 12207**, on the proposed Settlement including: (a) whether to grant final approval to the Settlement as fair, reasonable, and adequate and issue an Order dismissing the Complaint with prejudice; (b) whether Class Counsel's request for attorneys' fees and costs is reasonable and (c) whether to approve the service payment to Plaintiff. This hearing may be adjourned to a later date without further or prior notice by oral announcement by the Court or by written order.

24. Any Member of the Settlement Class may appear, in person or through counsel (at their own expense), at the aforementioned Fairness Hearing and be heard in support of or in opposition to the fairness, reasonableness and adequacy of the proposed Settlement, award of counsel fees, reimbursement of costs and expenses, and Class Representative service fee provided, however, that no person shall be heard in opposition to the proposed Settlement or the award, and no paper

or brief submitted by such person shall be received or considered by the Court unless such person has timely filed with the court a written objection and sent a copy to the Settlement Administrator in the manner described in the Notice.

25. In the event that the Settlement Agreement is not approved by the Court, or if approval of the Settlement Agreement, including the entry of the Order for Preliminary Approval or the Final Order and Judgment, is reversed or modified on appeal (except for the modification of any attorney's fee award), or any one of the conditions precedent set forth in the Settlement Agreement is not met, then the Order for Preliminary Approval and the Final Order and Judgment, including, but not limited to, the conditional class certification entered to effectuate this Agreement, and all findings of fact and conclusions of law therein, shall be automatically dissolved *ab initio* without further order of the Court, and become null and void and of no force and effect, and in such event all *status quo ante* rights of the Defendant to, among other things, (i) oppose any subsequent efforts by Plaintiff to certify this action as a class action, and (ii) all other defenses, rights, and positions shall in all respects be unaffected and preserved as shall those rights of Plaintiff and all Class Members.

IT IS SO ORDERED.

Dated: April 10, 2017

Mae A. D'Agostino
U.S. District Judge